

In my judgment, the award of BD3,000 damages cannot be faulted. I would dismiss the appeal.

Sir Alan Huggins C

I also would dismiss the appeal. The appellant raised two matters in the Petition. The first was that the damages should have been awarded for the period after 4 p.m. on 23 June and the second was in any event, the amount of damages was inadequate. Only the first of those two points has been taken in argument at the hearing.

This was an unfortunate case in which there was some misunderstanding. The Inspector who made the arrest clearly did not appreciate that it was his duty to take the appellant as soon as reasonably possible to the Court. He seems to have been aware that the matter was going to be mentioned in Court at 2 p.m. on the 25th, the following Monday and to have thought that as long as she was there at that time all would be well. It was not improper, in my view that he should have taken the appellant to a police station en route to the Court, but it was his duty to take her as soon as possible thereafter to the Court. His error was in detaining her in the police station. However, I do not think that the analogy which has been advanced of a clerk who was detained to the knowledge of somebody else is valid: mere knowledge is not sufficient. Here the Inspector was not responsible for the detention of the appellant after 4 p.m. and I think, as my Lord has said, that it was not open to him to release her and he is not responsible for what happened thereafter, whoever else may or may not have been responsible and liable in damages. For these reasons, I entirely agree with my Lord and the appeal ought to be dismissed.

Sir Derek Cons C

I agree with my Lords that the appeal should be dismissed for the reasons that have been given and there is nothing further that I wish to add.

PG TUAH BIN PG HJ KULA

v.

PUBLIC PROSECUTOR

HIGH COURT, BRUNEI
DATO' SIR DENYS ROBERTS CJ
[CRIMINAL APPEAL NO. 5 OF 1993]
19 APRIL 1993

CRIMINAL LAW: Charge under s. 6(a), Corruption Act (Cap 131) - Offence of corruptly attempting to obtain a gratification - Whether established - Fast approval of licence by defendant - Attempt to obtain sexual favours from complainant - Whether 'corrupt' intention proved - Whether sexual favours sought as reward for fast approval of licence; charge under s. 354, Penal Code - Offence of outraging the modesty of a woman - Whether established - Acts complained of - Whether constituted intention to outrage - Whether constituted criminal force - Section 350 Penal Code; sentence - Whether excessive - Acts complained of minor in nature - Whether could be viewed as serious infringement of s. 354, Penal Code - Public dislike of acts & other circumstances - Relevance.

The defendant was charged with two charges: the first charge, of corruptly attempting to obtain a gratification under s. 6(a) of the Corruption Act (Cap 131), alternatively, of an offence under s. 165 of the Penal Code; and the second charge, of outraging the modesty of a woman, contrary to s. 354 of the Penal Code.

The prosecution case depended mainly on the evidence of the complainant, a married Muslim woman of 37 years of age.

The complainant applied for a licence to employ foreign workers. The defendant got the application approved fast. He telephoned the complainant a number of times. He told the complainant that he had done it so quickly because she was 'special' and called her 'sayang'. He offered to deliver the licence himself. He told her that he wanted a kiss when she got the licence and that he wanted to take her to his flat to 'see things'. The complainant's husband reported the matter to the Anti Corruption Bureau (ACB). On the instructions of ACB officers, the complainant contacted the defendant, who delivered the licence to her house. She went with him in his car, as instructed by the ACB officers. In the car, the defendant told her that he was taking her to his flat. He held her hand and pinched her

cheek. At the flat, when the defendant was about to close the door, ACB officers entered the flat and arrested him. The defendant was heard to tell the complainant to say that they were there to look at the things. Later the defendant made a statement, which was recorded by two ACB officers, admitting a number of things, including that on the way to his flat, he had held the complainant's hand and pinched her cheek once, and that his intention in taking the complainant to his flat was 'to do something which is not good' to the complainant.

The Magistrate before whom the charges were heard found the complainant to be a truthful and reliable witness, accepting her evidence against that of the defendant. He held the defendant's statement to be a voluntary one. He held that the defendant had corruptly intended to obtain a sexual favour from the complainant, as a reward for approving and delivering the licence to her. He convicted the defendant of the first and second charges, and sentenced him to 12 months' imprisonment on the first and 6 months and 2 strokes on the second, the sentences to run consecutively. He did not deal with the alternative charge.

The defendant appealed against both the convictions and the sentence.

Held:

A. Regarding the convictions

[1] The appeal in relation to the first charge must be allowed. The prosecution had failed to establish the first charge.

To establish the charge, the prosecution must prove that the defendant was an agent, that he had acted corruptly, 'corrupt' being a question of intention, that he had attempted to obtain a gratification, and that the gratification was in relation to the principal's affairs.

Even if the defendant's statement was admitted, and though there was evidence that the defendant intended to entice the complainant into his flat and there take advantage of her, there was nothing on the evidence which entitled the Court to find that the defendant had a 'corrupt' intention, in that he intended to obtain sexual favours from her in return for the swift approval of her licence. No link was proved between the defendant's intent and the granting of the licence.

a [2] The appeal against conviction on the 2nd charge must be dismissed. The Magistrate was entitled to find that an offence against s. 354 of the Penal Code had been established.

b To establish the offence of outraging the modesty of a woman, contrary to s. 354 of the Penal Code, the prosecution must prove an intention on the part of the defendant to outrage the modesty of a woman, and an assault or the use of criminal force by the defendant on the complainant.

c The defendant did intend to outrage the modesty of the complainant, and what he did in the car did constitute 'criminal force'. An Act which might not outrage modesty in England, where a different mode of morals applies, might well do so in Brunei.

d The Magistrate had accepted the evidence of the complainant as reliable and truthful. This acceptance would not be affected even if the statement which the defendant made to ACB officers were to be rejected.

B. Regarding the sentences

e The appeal against sentence on the second charge must be dismissed.

f The sentence might have been substantial, but in a society such as that in Brunei, the offence itself is one of some gravity, as can be seen in the maximum sentence of five years which can be imposed. A Magistrate is entitled to take into account the general public dislike of the offence, bearing in mind the age and status of the victim.

[Orders accordingly].

Cases referred to:

- g** *Tan Kwang Joo v. PP* [1989] 3 MLJ 26 (Singapore) (**refd**)
PP v. Datuk Haji Harun bin Hj Idris (No. 2) [1977] 1 MLJ 15 (Malaysia) (**refd**)
R v. Parker [1985] 82 Cr. App. R. 69 (**refd**)
R v. Shivpuri [1986] 2 All ER 334 (**refd**)
Subki bin Ibrahim v. PP (Cr. App. No. 13/92) (**refd**)

Legislation referred to:

- h** Corruption Act (Cap 131) ss. 6(a)
 Penal Code, ss. 350, 354

Other sources referred to:

Ratanlal on the 'Law of Crimes', p. 1336

For the appellant - D.T. Clidero; M/s. Clidero & Co.

For the public prosecutor - Abdullah Soefry

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JUDGMENT

Denys Roberts CJ:

This is an appeal against both the conviction of and the sentence imposed upon, the appellant by a Magistrate on 20 February 1993.

The appellant pleaded not guilty to the following two charges, with an alternative to the first charge -

1st Charge

You Pengiran Tuah bin Pengiran Haji Kula I.C. No. 028749 (Yellow) are charged that you, on or about 3 September 1992, at Class F, Block 3 No. 4ADYMM Sultan's Flat Jalan Tutong, Bandar Seri Begawan, Brunei Darussalam, being an agent, to wit, a Labour Inspector in the employ of the Labour Department, did corruptly attempt to obtain from one Pengiran Huraini binte Pengiran Haji Tejudin, for yourself a gratification, to wit, a sexual favour with the said Pengiran Huraini binte Pengiran Haji Tejudin as a reward for doing an act in relation to your Principal's affairs to wit, approving and delivering to the said Pengiran Huraini binte Pengiran Haji Tejudin "Lesen Mengambil Dan Menggaji Pekerja-Pekerja Asing" (a Licence to recruit and employ foreign workers) and you have thereby committed an offence punishable under s. 6(a) of the Corruption Act (Cap 131).

Alternative Charge

That you on or about 3 September 1992, at Class F, Block 3 No. 4A, Duli Yang Maha Mulia Sultan's Flat, Jalan Tutong, Bandar Seri Begawan, Brunei Darussalam, being a public servant, to wit, a Labour Inspector in the employ of the Labour Department, did attempt to obtain from one Pengiran Huraini binti Pengiran Hj Tejudin, for yourself a valuable thing, to wit a sexual favour, from the said Pengiran Huraini binti Pengiran Hj Tejudin without consideration, whom you knew that as the manager of Syarikat Halilah dan Keluarga to have been or to be, or to be likely to be concerned with the official functions of yourself as a Labour Inspector and you have thereby committed an offence under s. 165 of the Penal Code and punishable under the same.

2nd Charge

That you on or about 3 September 1992, in your car with registration number KE 7955, in Bandar Seri Begawan, Brunei Darussalam, used criminal force on one Pengiran Huraini binti Pengiran Haji Tejudin, a woman, intending to outrage the modesty of the said

a Pengiran Huraini binti Pengiran Haji Tejudin and thereby committed an offence punishable under s. 354 of the Penal Code and punishable under the same.

The Magistrate convicted the appellant of the first and second charges and passed sentences of 12 months imprisonment on the first and 6 months and 2 strokes on the second, the sentences to run consecutively. He did not deal with the alternative charge.

Legal Issues

c The Magistrate directed himself correctly on the legal issues. In particular, he warned himself of the danger of convicting on the uncorroborated evidence of the complainant, in a case involving allegations of a sexual nature, though he said that it was open to him to do so if he was convinced that the complainant was "a truthful and reliable witness".

d Prosecution Case

This depends mainly upon on the evidence of the complainant, Pg Huraini, a woman of 37 married to Harun bin Ahmad.

e She is the proprietor of a tailor's shop and is related to the defendant. She had known him since the 1970's when she lived close to him in Kuala Belait.

She met the defendant in May 1992, when she went with Dk Maya to his office in Tutong, when Dk Maya enquired about a licence for her business.

f In August 1992, Pg Huraini went to the defendant's office and handed him a letter, which applied for a licence to employ foreign workers. The defendant said that she should have received a reply to her application and offered her the use of his P.O. Box.

g There followed a number of telephone calls by the defendant to Pg Huraini in August or early September 1992.

During the first call, he told her that her application had been approved. When she asked why it had been dealt with so quickly, the defendant told her she was "Special". He offered to deliver the licence to her, though she declined this, as she thought that the defendant was impolite.

The defendant called Pg Huraini again and asked her when she would collect her licence.

i She suggested a meeting at QAF Plaza and told him that she would take Dk Maya with her, to

which he objected. She went to the meeting place with Dk Maya but the defendant did not come.

Next day, the defendant again phoned and offered to deliver the licence to her. In answer to her question, the defendant said he had no other business in Bandar Seri Begawan but wanted to see her. He also told her that, after he had handed over the licence, he wanted to take her to his flat to "see his things".

Pg Huraini suspected that the defendant made this proposal because he wanted "to do bad things". She therefore told her husband, Harun, what had happened. He reported the matter to the Anti Corruption Bureau (ACB).

On 2 September, on the instructions of ACB officers, Pg Huraini phoned the defendant, who said he would like to see her the next day and would take her to his flat to see his things after he had delivered his licence. She asked him to come to her house and gave him her address.

The following morning, the 3 September 1992, the defendant handed over to her the licence, outside her house. At his insistence, she went with him in the car, as the ACB officers had told her to do this if he invited her.

In the car, the defendant said he was taking her to his flat. When she asked why her application had been dealt with so quickly, the defendant held her hand and pinched her cheek, saying that if Ibrahim (his colleague in the office) had dealt with it, she would not have got such an early reply.

At the flat, the defendant insisted on taking her up. Again, Pg Huraini was following ACB instructions that she should go up to the flat, if the defendant invited her to so.

The defendant opened the door of his flat, followed by Pg Huraini. As he was closing the door, ACB officers pushed it open and entered. The defendant and the complainant were taken away in separate cars.

The defendant spoke to Pg Huraini when she was in the car. He told her "you say we were here to look at the things". This was overheard by ASI Hj Rosli, who was in the car with the complainant.

In evidence, Pg Huraini testified that -

- (a) when the defendant spoke to her on the phone, he said she was "special" and used

- a the word "sayang", which is an affectionate Malay word used only to close friends;
- (b) the defendant told her that he wanted a kiss when she got her licence;
- (c) she did not collect her licence because the defendant had been "indecent" and because her car had broken down.

b

Other Evidence

Harun corroborates Pg Huraini's evidence that she complained to him on 1 September 1992, about the conduct of the defendant. As a result, he lodged a complaint with ACB.

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ACB officers said that they saw the defendant and Pg Huraini arrive at the defendant's flat and climb to the fourth floor. As they entered the flat, and before the door was closed, they entered it and introduced themselves.

d

The defendant made a long statement, recorded by two ACB officers. In this statement, he makes a number of important admissions -

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- (a) that he invited her to his flat to "have a look at my things there";
- (b) on 3 September 1992, on the way from Pg Huraini's house to his flat, "I did hold Pg Huraini's hand and pinch her cheek once";
- (c) "I promise that I will not repeat what I have done on 3 September 1992";
- (d) "It is my intention to bring Pg Huraini to Flat 4A Block 3 DYMM Flat Jalan Tutong to do something which is not good and here once again I promise not to repeat it again".

f

The admission of this statement in evidence will be considered later.

The defence

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The defendant is a Labour Inspector, having worked for the Government of Brunei since about 1965. He moved to his new house at Kg Bukit Beruang on 26 December 1992, having been transferred from Tutong because of poor eyesight.

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In May 1992, Pg Huraini came to his office with Dk Maya. Pg Huraini asked about her application to employ foreign workers. She submitted her letter of application to him. He took this to BSB, where it was approved by the Commissioner.

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He arranged on the phone to give her the licence. He did not post it as Pg Huraini was using his wife's postbox. On 3 September, he phoned Pg

Huraini and asked for her address, which she gave him. He told her he would give her the licence and arrived at her house at about 9.15 a.m. He handed her the licence and told her she was free to come with him if she wished.

In the car, he did not hold her hand or pinch her cheek. When they arrived at his flat, which he was vacating, he did not invite her there but she followed him. The ACB officers introduced themselves. He went with them. He said to the complainant "Why does it have to end like this. I only went to take my things. Why did you follow me?"

Various paragraphs of his statement to ACB officers were not true. He made them because he did not want to make a fuss, or was disturbed and he wanted to be released again. If he had realized the importance of the statement, he would not have made it.

Dk Maya, called as a defence witness, said that she made two visits to the defendant's office in Tutong, to see if she could obtain a licence to bring in workers for her tailoring shop. On one of the visits, she and Pg Huraini visited the defendant's house, where Pg Huraini sang.

Dk Maya admitted that she had been to a restaurant with the defendant, though she had refused his invitation on other occasions. She told the defendant that she did not want to go to his flat when he invited her. This evidence, in my view correctly, was not taken into account by the Magistrate when he considered whether the prosecution had established the guilt of the defendant. The occasions on which similar fact evidence may be given weight are limited and the authorities are not always easy to reconcile.

Magistrate's findings

- (1) The complainant, Pg Huraini was a truthful and reliable witness.
- (2) Where her evidence conflicts with that of the defendant, her evidence is accepted and his is rejected.
- (3) The defendant told her on the phone that she was special and that he wanted a kiss from her when he delivered her licence.
- (4) The defendant held her hand and pinched her cheek in his car.
- (5) He insisted on taking her to his flat and after his arrest, suggested that she should say that they were at the flat to see his things.

- a (6) The defendant's statement, which the Magistrate was satisfied to be a voluntary one, corroborates the complainant's story that he asked her to go to his flat and that he held her hand and pinched her cheek.
- b (7) The arguments of defence Counsel, that there is a conflict between the complainant and Dk Maya as to the number of visits made by her to the defendant's office in May, does not affect the credibility of Pg Huraini in essential matters.
- c (8) The reason why the complainant did not collect her licence was that she did not want to see the defendant, the lack of transport being a secondary consideration.
- d (9) The complaints against the defendant were not activated by malice against the defendant. Harun's licence to employ domestic helpers was amended in 1991, and was a matter with which the defendant was not concerned.
- e (10) The defendant was not an honest witness and his evidence was untruthful in essential details.
- f (11) The defendant, when he took the complainant to his flat, corruptly intended to obtain a sexual favour from her, as a reward for approving and delivering the licence to her.

First Charge

The first charge is of corruptly attempting to obtain a gratification under s. 6(a) of the Corruption Act (Cap. 131) as a reward for approving and delivering the licence.

To establish this charge, the prosecution must prove that -

- a (a) The defendant was an agent. This term includes anyone who is acting as a member of a Government department. This is not disputed by the defence.
- b (b) The defendant acted "corruptly". This means doing an act knowing that it is wrong, doing it with evil feelings and evil intentions.

'Corrupt' is a question of intention. If circumstances show that what a person has done was moved by an evil intention or a guilty mind, then he is liable. So if a defendant uses his position to solicit gratification with a guilty mind, he is within the section.

See *Tan Kwang Joo v. PP* [1989] 3 MLJ 26 (Singapore) and *PP v. Datuk Haji Harun bin Hj Idris* (No. 2) [1977] 1 MLJ 15 (Malaysia).

It was made clear by the English Court of Appeal in *R v. Parker* [1985] 82 Cr. App. R. 69 that corruption may include a reward for a past favour as well as for a future one.

It remains to be decided, however, if there was evidence before the Magistrate which entitled him to find that the defendant had a corrupt intention, in that he expected to obtain sexual favours from the complainant in return for the swift approval of her licence.

- (c) The defendant attempted to obtain a gratification. If the admissions made by the defendant in paragraphs 23 and 24 of his statement are admitted, there was evidence on which the Magistrate could so find. The fact that the defendant's object was frustrated by the arrival of ACB officer's in his flat, before he was able to carry out his object, would not prevent him from being convicted of the attempt, if the Magistrate was satisfied that there was an actual attempt to obtain a reward, not merely an intention to do so and preparatory acts only.
- (d) The defendant sought a "gratification". In s. 2 of Cap. 131 this word is defined in wide terms, sufficient in my opinion to include sexual favours. Paragraph (g) of the definition of gratification states that it includes -

any other service, favour or advantage of any description whatsoever

The giving of sexual favours, of any description, as a reward for any action relating to his principal's affairs, is a gratification, such as will make the agent who seeks it liable under s. 6(a) of Cap. 131.

- (e) The gratification must be in relation to the principal's affairs. A principal includes a Government department. In this instance, the sexual favour was found by the Magistrate to have been sought by the defendant as a reward for what he had done in his official capacity. It is my doubt as to whether this factor was established which has led me to quash the conviction on the first charge.

Charge 2

This relates to the incident which, the Magistrate found, took place in the car, consisting of the holding of Pg Huraini's hand and the pinching of her cheek by the defendant.

- a To establish the offence of outraging the modesty of a woman, contrary to s. 354 of the Penal Code, the prosecution must prove that -

- (a) the defendant intended to outrage the modesty of a woman or that he knew it to be likely that he would do so; and
- b (b) there was an assault, or the use of criminal force, by the defendant on the complainant.

In considering (a), the Magistrate took into account the fact that Pg Huraini is a Malay Muslim and a married woman of mature age, all matters which the defendant must have known.

- c This seems to me to be the correct approach. Even if an act would not outrage modesty in England, where a different code of morals applies, it may well do so in Brunei. I was referred by the Public Prosecutor to a passage in Ratanlal on the '**Law of Crimes**' in which he says, at p. 1336, that

to place hands on the shoulder of a woman will be an outrage on the modesty of a Hindu or a Mahomedan woman, but not a European.

- e The defendant is charged with "intending to outrage". I do not disagree with the Magistrate that the defendant did so intend, when holding Pg Huraini's hand and pinching her cheek. This was established to the Magistrate's satisfaction, as was the fact that Pg Huraini was in fact outraged.

- f The Magistrate repeated the definition of "criminal force", as this is set out in s. 350 of the Penal Code, and concluded that what the defendant did amounted, according to that definition, to "criminal force". I accept that he was correct.

General

- g At p. 48 of the record, ASI Hj Rosli stated "I did promise him a lighter sentence if he made a statement. I didn't threaten him".

- h The statement made by the defendant was recorded by two officers, ASI Hj Balim, who recorded paragraphs 1 to 22 inclusive of the statement, and ASI Hj Rosli who recorded paragraphs 23 to 25.

- i On the face of it, what was said by Hj Rosli was an inducement and any statement obtained as a result of it should have been excluded by the Magistrate. The latter, when admitting the statement as a voluntary one, did not mention the supposed inducement.

Counsel for the defendant did not refer to this admission, that there had been an inducement, in his submissions, or in his grounds of appeal. I did not consider, however, that this should prevent him from raising the matter on appeal if he wished to do so. I therefore felt obliged to decide what effect such an inducement might have.

A further question was whether the Magistrate would have decided that the inducement affected the whole statement, or only that portion of it which was recorded by Hj Rosli.

I do not think that the defendant saw himself as making two separate statements, since the second was made immediately after the other. In paragraph 25, the defendant says "I have read over all my statement and admit that all are true and correct".

I accept that, if an inducement was made, the defendant must have believed that this applied to the whole of the statement which he made. Since after the inducement was offered, he read over and signed a statement that all he had said was true.

However, having decided that the statement ought to have been excluded, my attention was drawn to the original written record of the Magistrate. This records Hj Rosli as saying "I did **not** promise him a lighter sentence if he made a statement.

It was clear, therefore, that I had been wrong to consider the effect of excluding the statement on the grounds that there had been an inducement. There had been none. This explains why the Magistrate did not mention the supposed inducement when he found that the prosecution had proved that the defendant's statement was voluntary. It also explains why Counsel for the defence, an alert and experienced advocate, did not raise this matter in his submission to the Magistrate or in his ground of appeal.

I indicated to Counsel for the prosecution and the Accused that I would allow the appeal because the statement, being obtained by inducement, should have been excluded. And I was not satisfied that, on the whole evidence presented, the Magistrate must have reached the same conclusion.

When it was later drawn to my attention that the typescript was inaccurate, that there was no inducement and that the Magistrate was entitled to admit the statement as voluntary, it

a was then necessary for me to consider whether, on the evidence as a whole, including the statement, the prosecution has proved its case. I invited both Counsel to address me as to this.

Effect of inclusion of statement

b If the defendant's statement is admitted in evidence, is the Magistrate correct in his conclusion in relation to the first charge?

At p. 18 of his judgment, the Magistrate states as follows -

c Taking into consideration the evidence as a whole, including the admission of the defendant at paragraph 24 of his statement, I have reached the irresistible conclusion that when the defendant took the complainant to his flat, he did corruptly attempt to obtain a sexual favour from her as a reward for approving and delivering to her a labour licence.

d The statement contains an admission by the defendant that he intended to do something "which is not good" to Pg Huraini at his flat. He also promised, in para 23, not to repeat "What I have done on 3 September 1992, though this could have referred only to the outrage of Pg Huraini's modesty which took place in the car.

e Pg Huraini herself does not allege that the defendant ever mentioned that he expected her to grant him sexual favours at the flat. He mentioned that he expected a kiss from her when he gave her the licence. He gave this to her outside her flat and before there was any visit to his flat.

f Throughout, according to her evidence, the defendant said that he wanted her to see the things in his former flat. He did not link this to the grant of a licence. Nor does she say that he did. According to her "My feeling was that there must be other reasons why he wanted to bring me there from the way he said it. I think the reason must be to do bad things. I suspected it. That is why I told my husband".

g The defendant is charged with attempting to obtain a sexual favour at his flat in Jalan Tutong as a reward for approving and delivering her licence. It is, however, apparent from the evidence that nothing occurred at all at the flat, since the ACB officers intervened as soon as the defendant and Pg Huraini entered it.

h There may, of course, be occasions when a public officer corruptly seeks a gratification, even where

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he does not mention the affairs of his principal for which he seeks it. Usually, however, there will be mention, at some stage, of what the gratification is for. There was no such mention here.

There were grounds for suspicion that the defendant wished to use his position to further his acquaintance with Pg Huraini. It is established that he had misused his position, by speaking to her affectionately on the phone; that he told her that he wanted a kiss for securing her licence; he admitted that he intended at his flat "to do something which is not good to her". But there is nothing, in my judgment, on the evidence which suggests that he intended to obtain any sexual favours from her as a reward for getting her a licence quickly. He had handed this to her before they left for his flat. Pg Huraini herself, suspicious as she was of what might happen in the flat, did not testify that the defendant linked the visit to his flat with the licence.

I believe that there was certainly evidence that the defendant intended to entice Pg Huraini into his flat and there take advantage of her. There is, however, nothing to substantiate the finding that this must have been as reward for the swift grant of the licence.

This doubt would be sufficient, by itself, to allow the appeal in relation to the first charge. It is not, therefore, necessary for me to consider whether there was any attempt by the defendant, to obtain a gratification at his flat.

I agree with the Public Prosecutor that it does not matter whether an offence is impossible or not, provided that there is proved to be present the necessary intent and that the acts concerned are more than merely preparatory to the commission of the intended offence - see *R v. Shivpuri* [1986] 2 All ER 334.

In this instance, however, the offence was interrupted at an early stage by ACB officers. Could it be said that the defendant, with the intention of taking advantage of her if he could, had taken steps to carry out his purpose and not merely committed acts which were no more than preparatory?

It is not disputed that nothing took place in the flat. Is it sufficient to show that the defendant intended to do something to her in his flat? I do not think that his admission is sufficient. It is necessary to show that he did something to give

a effect to that intention. His invitation to her, to visit the flat, could be regarded as a step towards the carrying out of this intention.

I thus agree with the Magistrate that some of the defendant's acts could be said to be connected to the offence and were not only preparatory to it, hard though it may sometimes be in practice to distinguish between them.

Nevertheless, for the reasons given above, I did not consider that the prosecution has established this offence, since no link is proved between the defendant's intent and the granting of the licence.

c *Second charge*

The Magistrate accepts the evidence of Pg Huraini as reliable and truthful. I do consider that this acceptance would have been affected by the rejection of the statements which the defendant made to ACB officers.

d Once her evidence is accepted and that of the defendant rejected as untruthful, the Magistrate was entitled to find, as he did, that an offence against s. 354 of the Penal Code was established.

e The Magistrate defined "criminal force" and concluded that this had been used by the defendant, as this term is defined by s. 350 of the Penal Code.

There has thus been a finding of fact which I do not feel it right to upset.

f I refuse the appeal against conviction on the second charge.

Sentence

g On the second charge, which remains, the Magistrate imposed a sentence of six months imprisonment and two strokes.

The maximum sentence for a conviction against s. 354 of the Penal Code is five years, with whipping.

h Before passing sentence on this charge, the Magistrate took into account the family circumstances and clean record of the Accused. He also gave weight to the likely loss by the defendant of his job and of the benefits and privileges that are attached to it.

i It was argued, on his behalf, that what the defendant did was of a minor nature and ought

to be punished as not being a serious infringement of the section. **a**

I must repeat what I said in *Subki bin Ibrahim v. PP* (Cr. App. No. 13/92) in which I commented that, "a serious view is taken in Brunei of offence against s. 354 of the Penal Code".

A magistrate is entitled to take into account the general public dislike of the offence, bearing in mind the age and status of the victim. **b**

There are, no doubt, other countries in which the conduct of the defendant would not draw the criminal law upon him. In Brunei, however, it does. **c**

In passing a sentence of six months for what was not a serious infringement of the section I cannot say that the Magistrate was wrong. The sentence may have been substantial, but in a society such as this, the offence itself is one of some gravity, as can be seen in the maximum sentence of five years which can be imposed. **d**

I dismiss the appeal of the defendant against sentence.

Reported by Shamsiah Begum Subhan **e**

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